

UNITED STATES DISTRICT COURT
District of Maine

SHUCEYB HERSI,

Plaintiff

V.

CUMBERLAND COUNTY, CITY OF
PORTLAND, KEVIN JOYCE, MICHAEL
SAUCHUCK, MATTHEW PAVLIS,
CHARLES FRAZIER, JOSHUA
McDONALD, and DAVID SKIBITSKY,
Defendants

Docket No. 2:17-cv-94-DBH

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS CUMBERLAND
COUNTY, KEVIN JOYCE, AND DAVID SKIBITSKY**

NOW COME Defendants Cumberland County, Kevin Joyce, and David Skibitsky, through counsel, and hereby respond to the allegations contained in Plaintiff's Complaint as follows:

AFFIRMATIVE DEFENSES

A. Plaintiff's Complaint fails to state a cause of action against any of these Defendants upon which relief may be granted.

B. Plaintiff has failed to exhaust his administrative remedies, and his action against these Defendants is therefore barred.

C. Defendant Cumberland County and Defendant Kevin Joyce in his official capacity are immune from suit under state law.

D. Defendant Joyce in his individual capacity and Defendant Skibitsky are entitled to discretionary function immunity and/or intentional act immunity for any claims against them under

state law.

E. Defendant Joyce in his individual capacity and Defendant Skibitsky are entitled to qualified immunity for any claims against them brought pursuant to 42 U.S.C. § 1983.

F. Plaintiff's damages were directly and proximately caused by the acts and/or omissions of an individual and/or entity other than these Defendants.

G. Plaintiff's damages were directly and proximately caused by a legally sufficient superceding/intervening cause.

H. Plaintiff has failed to mitigate his damages as required by law.

ANSWER

Parties

1. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

2. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

3. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

4. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

5. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

6. These Defendants admit the allegations contained in this paragraph of Plaintiff's Complaint.

7. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

8. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

9. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

10. These Defendants admit the allegations contained in this paragraph of Plaintiff's Complaint.

11. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

12. These Defendants admit the allegations contained in this paragraph of Plaintiff's Complaint.

13. These Defendants admit the allegations contained in this paragraph of Plaintiff's Complaint.

Subject Matter Jurisdiction

14. The allegations contained in this paragraph of Plaintiff's Complaint do not state an allegation to which a response is required. To the extent that a response is required, these Defendants deny that there is any actionable claim against them.

15. The allegations contained in this paragraph of Plaintiff's Complaint do not require a response. To the extent a response is required, these Defendants admit that this court has jurisdiction over the parties and claims alleged in the Complaint, but deny any liability to Plaintiff.

16. The allegations contained in this paragraph of Plaintiff's Complaint do not require a response. To the extent a response is required, these Defendants admit that this court has jurisdiction over the parties and claims alleged in the Complaint, but deny any liability to Plaintiff.

Personal Jurisdiction

17. The allegations contained in this paragraph of Plaintiff's Complaint do not require a response. To the extent a response is required, these Defendants admit that this court has jurisdiction over the parties and claims alleged in the Complaint, but deny any liability to Plaintiff.

Venue

18. The allegations contained in this paragraph of Plaintiff's Complaint do not require a response. To the extent a response is required, these Defendants admit that venue is properly laid before this court, but deny any liability to Plaintiff.

Facts Common to All Counts

19. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

20. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

21. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

22. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

23. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

24. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

25. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

26. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

27. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

28. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

29. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

30. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

31. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

32. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same. These Defendants admit that Plaintiff was committed to their custody on or about July 24, 2012.

33. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

34. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

35. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

36. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

37. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

COUNT I – 42 U.S.C. § 1983 Violation Against Portland Police Officer Defendants, Cumberland County, and Kevin Joyce for Illegal Arrest

38. These Defendants repeat and reassert the responses provided to the allegations contained in Paragraphs 1 through 37 of Plaintiff's Complaint as if fully set forth.

39. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

40. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

41. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

WHEREFORE, these Defendants pray for judgment in their favor and against Plaintiff, plus their costs, attorneys fees, interest, and such other and further relief deemed just and equitable

under the circumstances.

COUNT II – 42 U.S.C. § 1983 Violation Against Portland Police Officer Excessive Force

42. These Defendants repeat and reassert the responses provided to the allegations contained in Paragraphs 1 through 41 of Plaintiff's Complaint as if fully set forth.

43. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

44. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

45. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

**COUNT III – 42 U.S.C. § 1983 Supervisory Violation Against Michael Sauschuck for
Illegal Arrest**

46. These Defendants repeat and reassert the responses provided to the allegations contained in Paragraphs 1 through 45 of Plaintiff's Complaint as if fully set forth.

47. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

48. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

49. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

50. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

51. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

52. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

53. These Defendants are without sufficient knowledge or information so as to form a belief as to the truth of the allegations contained in this paragraph of Plaintiff's Complaint and therefore deny same.

COUNT IV – 42 U.S.C. § 1983 Violation Against Cumberland County Jail Corrections Officers, Cumberland County, and Kevin Joyce for Excessive Force

54. These Defendants repeat and reassert the responses provided to the allegations contained in Paragraphs 1 through 53 of Plaintiff's Complaint as if fully set forth.

55. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

56. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

57. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

58. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

59. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

60. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

61. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

WHEREFORE, these Defendants pray for judgment in their favor and against Plaintiff, plus their costs, attorneys fees, interest, and such other and further relief deemed just and equitable under the circumstances.

COUNT V – 42 U.S.C. § 1983 Supervisory Violation Against Kevin Joyce for Excessive Force

62. These Defendants repeat and reassert the responses provided to the allegations contained in Paragraphs 1 through 61 of Plaintiff's Complaint as if fully set forth.

63. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

64. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

65. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

66. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

67. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

68. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

WHEREFORE, these Defendants pray for judgment in their favor and against Plaintiff, plus their costs, attorneys fees, interest, and such other and further relief deemed just and equitable under the circumstances.

COUNT VI – 42 U.S.C. § 1983 Violation Against Cumberland County Jail Corrections Officers, Cumberland County, and Kevin Joyce for Denial of Medical Care

69. These Defendants repeat and reassert the responses provided to the allegations contained in Paragraphs 1 through 68 of Plaintiff's Complaint as if fully set forth.

70. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

71. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

72. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

73. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

74. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

WHEREFORE, these Defendants pray for judgment in their favor and against Plaintiff, plus their costs, attorneys fees, interest, and such other and further relief deemed just and equitable under the circumstances.

COUNT VII – 42 U.S.C. § 1983 Violation Cumberland County Jail Corrections Officers, Cumberland county, and Kevin Joyce for Denial of Religious Exercise

75. These Defendants repeat and reassert the responses provided to the allegations contained in Paragraphs 1 through 74 of Plaintiff's Complaint as if fully set forth.

76. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

77. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

78. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

79. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

80. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

WHEREFORE, these Defendants pray for judgment in their favor and against Plaintiff, plus their costs, attorneys fees, interest, and such other and further relief deemed just and equitable under the circumstances.

COUNT VIII – Common Law State Law Tort Claim of False Arrest v. Defendant Officers, Defendant Deputy, Cumberland County, and Kevin Joyce

81. These Defendants repeat and reassert the responses provided to the allegations contained in Paragraphs 1 through 80 of Plaintiff's Complaint as if fully set forth.

82. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

83. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

84. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

85. These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

WHEREFORE, these Defendants pray for judgment in their favor and against Plaintiff, plus their costs, attorneys fees, interest, and such other and further relief deemed just and equitable under the circumstances.

COUNT IX – Common Law State Tort Claim of Battery v. Defendant Officers, Defendant Deputies, Cumberland County, and Kevin Joyce

86. These Defendants repeat and reassert the responses provided to the allegations contained in Paragraphs 1 through 85 of Plaintiff's Complaint as if fully set forth.

82(sic). These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

83(sic). These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

85(sic). These Defendants deny the allegations contained in this paragraph of Plaintiff's Complaint.

Dated: May 8, 2017

/s/ Peter T. Marchesi
Peter T. Marchesi, Esq.

/s/ Cassandra S. Shaffer
Cassandra S. Shaffer, Esq.

Wheeler & Arey, P.A.
Attorneys for Cumberland County Defendants
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Waterville, ME 04903-0376

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SHUCEYB HERSI,

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CERTIFICATE OF SERVICE

I, Peter T. Marchesi, Esq., attorney for Defendants, hereby certify that:

- Answer and Affirmative Defenses of Defendants Cumberland County, Kevin Joyce and David Skibitsky

has been served this day on Plaintiff by filing with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

Robert C. Andrews, Esq.

rob.andrews.esq@gmail.com

Dated: May 8, 2017

/s/ Peter T. Marchesi

Peter T. Marchesi, Esq.

Attorney for Cumberland County Defendants

Wheeler & Arey, P.A.

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